Supreme Court, U.S.
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No. 96-1532

In The

# Supreme Court of the United States

October Term, 1996

NEW JERSEY CARPENTERS APPRENTICE TRAINING AND EDUCATION FUND,

*Petitioner,*

*vs.*

BOROUGH OF KENILWORTH, NEW JERSEY,

*Respondent.*

*On Petition for Writ of Certiorari to the Supreme Court of the State of New Jersey*

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Respondent disagrees with the statement of the question posed by Petitioner. Respondent states the question thusly:

> **May the New Jersey Supreme Court interpret a New Jersey Statute exempting a "school" from New Jersey real estate taxes differently than the Internal Revenue Service interprets an Internal Revenue Code provision exempting "educational institutions" from federal income taxation?**

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Respondent requests that the Court deny the Petition for a Writ of Certiorari filed by the New Jersey Carpenters Apprentice Training and Education Fund seeking review of an opinion of the Supreme Court of the State of New Jersey denying a tax exemption. The opinion of the New Jersey Supreme Court is reported at 147 N.J. 171, 685 A.2d 1309 (1996).

## STATEMENT OF JURISDICTION

Contrary to Petitioner's assertion, the Court does not have jurisdiction to review the decision of the Supreme Court of the State of New Jersey under 28 U.S.C. § 1257.

## STATEMENT OF THE CASE

Subject to the exception set forth below, Respondent accepts Petitioner's statement of the case.

The Supreme Court of New Jersey did not note that its definition of a "school" contradicts the Internal Revenue Service's definition of that term (Petition at 7). The New Jersey Supreme Court was contrasting the terms used in the Internal Revenue Code, specifically IRC § 501(c)(3), "corporations, and any community chest, fund or foundation, organized and operated exclusively for . . . educational purposes" with the specific exemption from New Jersey real estate taxes claimed by Petitioner in N.J.S.A. 54:4-3.6, "colleges, *schools*, academics or seminaries" (Petitioner's Appendix, A-22, 23).

Additionally, the Supreme Court of New Jersey did not explicitly acknowledge that its definition of a "school" is repugnant to the definition of that term under federal law (Petition at 8). Instead, the Court contrasted the broad construction which the Internal Revenue Service has applied to exemptions, under the Internal Revenue Code (Petitioner's

Appendix, A-22) and the broad construction given by some state courts respecting property tax exemptions (Petitioner's Appendix, A-22) with the strict construction applied to exemptions by other states (Petitioner's Appendix, A-19) and the New Jersey rule that "exemption laws are strictly construed against the taxpayer, and the taxpayer bears the burden of proving the exemption" (Petitioner's Appendix, A-23).

## REASONS FOR DENYING THE WRIT

### I.

### THIS COURT LACKS JURISDICTION.

Under 28 U.S.C. § 1257(a), final judgments or decrees rendered by the highest court of the state may be reviewed by the Supreme Court: (1) where the validity of a treaty or statute of the United States is drawn in question; or (2) where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or (3) where any title, right, privilege or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States. Petitioner relies upon the second listed ground. However, the Petition does not assert that the validity of the statute in question, N.J.S.A. 54:4-3.6, is repugnant to the Constitution or any treaty or law of the United States. The Petition simply asserts that the New Jersey Supreme Court has interpreted the word "school" in construing the New Jersey real estate tax exemption statute differently than "educational purposes" have been construed under the Internal Revenue Code. Such does not demonstrate a "repugnancy" between the state and federal statutes. States are free to set their own criteria for exemptions from state taxes. They need not be the same as the criteria for federal tax exemption.

## II.

## THE COURT SHOULD DENY THE PETITION BECAUSE NO FEDERAL QUESTION IS PRESENTED.

The issue in the case was clearly set forth in the opinion of the New Jersey Supreme Court:

> N.J.S.A. 54:4-3.6 exempts from real property taxation any building that (1) is actually used as a "school" and (2) is "not conducted for profit." Plaintiff, the New Jersey Carpenters Apprentice and Education Fund (Fund) owns a building in which it operates a training center for apprentices. The question to be resolved in this case is whether that building is exempt under N.J.S.A. 54:4-3.6. (Petition's Appendix, A-2).

The New Jersey Supreme Court answered in the negative. This is a case of a state court interpreting a state law. No federal question is presented. The Court should deny the Petition on that ground.

## III.

## THIS COURT SHOULD DECLINE TO REVIEW THIS CASE BECAUSE THE ISSUES PRESENTED BY PETITIONER WERE NEITHER RAISED NOR DECIDED IN THE STATE COURT BELOW.

Where issues have not been raised in state court proceedings, the United States Supreme Court should decline to grant Petitions for Writs of Certiorari, *Ellis v. Dixon*, 349 U.S. 458 (1955), *rehearing denied*, 350 U.S. 855 (1955); *Yee v. City of Escondido*,

503 U.S. 519 (1992); *Beck v. Washington*, 369 U.S. 541 (1962). Rule 14(1)(g)(i) of the United States Supreme Court Rules requires the Statement of the Case in the Petition, where a review of a state court judgment is sought, to contain a specification of the stage in the proceedings when the federal questions sought to be reviewed were raised, the method or manner of raising them, and the way in which they were passed on by those courts. A review of the entire Petition, including the Appendix containing the decisions below, makes clear that these alleged federal questions were never raised in the state courts. The Petition appears to acknowledge as much (Petition at 9), but does not expressly so state. Since the Petitioner did not raise these issues below, it should not be heard to raise them now.

## CONCLUSION

For the foregoing reasons, it is respectfully requested that the Writ of Certiorari be denied.

Respectfully submitted,

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